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6 Attorneys for Defendants Ocwen Loan Servicing, LLC, Mortgage Electronic
7 Registration Systems, Inc., CIT Bank, N.A. and Defendant/Counterclaimant/Third-Party
8 Plaintiff Deutsche Bank National Trust Company As Trustee For Indymac Indx
9 Mortgage Loan Trust 2005-AR14, Mortgage Pass-Through Certificates Series 2005-
AR14

10 **IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

11 KATRINA PERKINS STEINBERGER,
12 as Executor of the Estate of Charles A.
Perkins, deceased, and individually,

13
14 Plaintiff,

15 vs.

16 INDYMAC MORTGAGE SERVICES, a
17 division of ONEWEST BANK, F.S.B., a
Federally Chartered Savings Bank;
18 DEUTSCHE BANK NATIONAL TRUST
COMPANY, as Trustee of the INDYMAC
19 INDX MORTGAGE LOAN TRUST
20 2005-AR14; MORTGAGE
ELECTRONIC REGISTRATION
21 SYSTEMS, INC., a Delaware
Corporation; OCWEN LOAN
22 SERVICING, LLC, a Limited Liability
23 Company; KEELEY KRISTINE SMITH,
an Attorney licensed with the Arizona
24 State Bar; JOHN AND JANE DOES 1-
25 1000, XYZ CORPORATIONS 1-15; ABC
LIMITED LIABILITY COMPANIES 1-
26 15; and 123 BANKING ASSOCIATIONS
27 1-15,

28 Defendants.

Case No. 2:15-cv-00450-ROS

Hon. Roslyn O. Silver

**THIRD-PARTY DEFENDANT
DEUTSCHE BANK AS TRUSTEE'S
MOTION FOR ADVERSE
INFERENCE REGARDING
AUTHENTICITY OF LOAN
DOCUMENTS**

1 DEUTSCHE BANK NATIONAL TRUST
2 COMPANY, as Trustee for INDYMAC
3 INDX MORTGAGE LOAN TRUST
4 2005-AR14, MORTGAGE PASS-
THROUGH CERTIFICATES SERIES
2005-AR14,

5 Counterclaimant,

6 vs.

7 KATRINA PERKINS STEINBERGER, as
8 Executor of the Estate of Charles A.
Perkins, deceased, and individually,

9 Counterdefendants.
10

11 DEUTSCHE BANK NATIONAL TRUST
12 COMPANY, as Trustee for INDYMAC
13 INDX MORTGAGE LOAN TRUST
14 2005-AR14, MORTGAGE PASS-
THROUGH CERTIFICATES SERIES
15 2005-AR14,

16 Third-Party Plaintiff,

17 vs.

18 SAGUARO DESERT TRUST; KATRINA
19 PERKINS STEINBERGER, as Executive
Trustee of Saguaro Desert Trust; M&I
20 MARSHALL & ILLSLEY BANK, a
21 Wisconsin Banking Corporation;
22 QUALITY LOAN SERVICE
CORPORATION, a California
23 Corporation; RANCHO ALTA VIDA
HOMEOWNERS' ASSOCIATION, an
24 Arizona Non-Profit Corporation; DOE
INDIVIDUALS OR ENTITIES 1-10;
25 UNKNOWN HEIRS AND DEVISEES
26 OF CHARLES A. PERKINS,
DECEASED.

27 Third-Party Defendants.
28

Pursuant to FRCP 37(b)(2)(A)(ii), Third-Party Defendant, Deutsche Bank National Trust Company As Trustee For Indymac Indx Mortgage Loan Trust 2005-AR14, Mortgage Pass-Through Certificates Series 2005-AR14 (“Deutsche Bank as Trustee”) hereby moves for an adverse inference order in light of Plaintiffs’ failure to obey this Court’s order. Specifically, for disobeying the following order issued on August 7, 2015: “The Court orders that plaintiff’s counsel, within a reasonable period of time, inspect the original documents in person.” (Doc. 65). To date, Plaintiff’s attorney has not inspected the loan documents in person. Therefore, an appropriate sanction would be to prevent Plaintiff from disputing the authenticity of the loan documents in these proceedings, thereby narrowing the scope of this litigation.

I. Factual and Procedural History

This case was filed by Plaintiffs on the eve of a scheduled trustee’s sale. Without any good-faith basis, Plaintiffs continue to dispute the authenticity of the original loan documents which are currently held in a safe at undersigned counsel’s office at: 2929 N. Central Avenue, Suite 1560, Phoenix, AZ 85012. For example, in their Second Amended Complaint, at Paragraph 146, “Plaintiff alleges that the whereabouts of the Note are unknown.” (See ¶ 146, Second Amended Complaint, Doc. 1, page 30 of 58). Plaintiffs also allege that “No Defendant is the Note Holder/Lender because no entity took the Note by transfer and is entitled to payment, while also being the true beneficiary of the DOT.” (See ¶ 150, Second Amended Complaint, Doc. 1, page 31 of 58). Finally, Plaintiffs allege that “Defendants having voluntarily separated the Note/debt from the DOT; the DOT secures nothing.” (See ¶ 194, Second Amended Complaint, Doc. 1, page 38 of 58).

In short, Plaintiffs are making “show me the note” types of arguments in order to avoid paying what is owed on the subject loan. However, Deutsche Bank as Trustee has *tried* to “show” Plaintiffs the original note and corresponding loan documents since this case was removed. The custodial history of the original loan documents was set forth in Defendants’ Response to Plaintiff’s Motion to Remand (Doc. 33). Specifically,

1 Deutsche Bank as Trustee received the original loan documents on or about June 2,
 2 2005. (See ¶ 4 of the Declaration of Barbara Campbell, attached as Exhibit A to
 3 Response to Motion to Remand (Doc. 33)). The loan documents were sent to
 4 undersigned counsel's office and received and signed for on February 6, 2015. (See
 5 Exhibit B to Response to Motion to Remand (Doc. 33)). At the time the judicial
 6 foreclosure was filed on March 23, 2015 (Doc. 14), Deutsche Bank as Trustee was in
 7 possession of the original "wet-ink" note, endorsed in blank, through counsel. The loan
 8 documents are currently held at a safe at undersigned counsel's office. (See Declaration
 9 of Solomon Krotzer, attached as **Exhibit A**).

10 Given the above, at a status conference on August 7, 2015, this Court ordered that
 11 Plaintiffs inspect the original loan documents "in person," in order to narrow the scope
 12 of this litigation. (Doc. 65). As expected, Plaintiffs have not inspected the original loan
 13 documents and over *two months* have passed since this Court's order.

14 **II. Adverse Inference is Appropriate Pursuant to FRCP 37(b)(2)(A)(ii)**

15 Given Plaintiffs' overt violation of this Court's order, an appropriate sanction
 16 would be to prohibit Plaintiffs from disputing the authenticity of the loan documents.
 17 Specifically, FRCP 37(b)(2)(A)(ii) states:

18 (A) *For Not Obeying a Discovery Order.* If a party ... fails to obey an order
 19 ... the court ... may issue further just orders. They may include the
 20 following: ... (ii) Prohibiting the disobedient party from supporting or
 21 opposing designated claims or defenses"

22 This sanction would be appropriate because it would not have taken much time or
 23 effort for opposing counsel to inspect the original loan documents. Presumably, the
 24 reason Plaintiffs have not inspected the original loan documents is because they benefit
 25 from their ignorance. For example, as long as Plaintiffs have not actually inspected the
 26 original loan documents, they can continue to make their "show me the note" arguments
 27 in these proceedings and dispute the authenticity of the documents. In short, Plaintiffs
 28 ignored and disregarded this Court's order for their own benefit.

1 Scanned copies of the “original collateral file,” containing the original “wet-ink”
2 Note, Deed of Trust, and other documents is attached as **Exhibit B**.

3 Scanned copies of the origination file, with original “wet-ink” copies of the loan
4 application and related documents signed by Mr. Perkins at closing, is attached as
5 **Exhibit C1 through C5**.

6 Clearly, there is no reason to dispute the authenticity of these documents. The
7 signature of Charles Perkins is uniform throughout. The signature matches the will of
8 Mr. Perkins, filed in the probate matter, which is attached as **Exhibit D**.

9 **III. CONCLUSION**

10 Therefore, Deutsche Bank as Trustee moves for an adverse inference order,
11 conclusively presuming for purposes of these proceedings, that the documents attached
12 as **Exhibit B** and **Exhibit C1 through C5** are the original “wet ink” documents signed
13 by Mr. Perkins, that Deutsche Bank as Trustee has been in possession of the original
14 “wet-ink” Adjustable Rate Note since June 2, 2005, and prohibiting Plaintiffs from
15 making contrary claims or defenses, including disputing the authenticity of these
16 documents, in these proceedings.

17 Dated: October 12, 2015

18 **HOUSER & ALLISON, APC**

19 s/ Solomon S. Krotzer

20 Robert W. Norman, Esq.

21 Solomon S. Krotzer, Esq.

22 HOUSER & ALLISON

23 A Professional Corporation

24 2929 N. Central Ave., Suite 1560

25 Phoenix, Arizona 85012

26 Attorneys for Defendants Ocwen Loan
27 Servicing, LLC, Mortgage Electronic
28 Registration Systems, Inc., CIT Bank, N.A.
and Defendant/Counterclaimant/Third-Party
Plaintiff Deutsche Bank National Trust
Company As Trustee For Indymac Indx
Mortgage Loan Trust 2005-AR14, Mortgage
Pass-Through Certificates Series 2005-AR14

CERTIFICATE OF SERVICE

I hereby certify that on October 12, 2015, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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s/ Paige R. Kleinwolterink
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